

RULES OF THE  
DEPARTMENT OF REVENUE  
CHAPTER 810-4-3

REQUIREMENTS FOR ASSESSING AND GRANTING  
OF ABATEMENT OF NONEDUCATIONAL AD VALOREM TAXES  
ON CERTAIN INDUSTRIAL PROPERTY

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810-4-3-.01 Scope of Rules

The purpose of this regulation is to establish guidelines and procedures for the assessing and granting of abatements of noneducational ad valorem taxes on certain industrial property, in order to comply with Act 92-599.

Author: Ken Green

Authority: Act 92-599

History: Filed with LRS October 29, 1992, effective October 29, 1992.  
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#### 810-4-3-02 Taxability of Property

(1) Private use property shall be subject to ad valorem taxes as if the private user held title to the property when a public authority, county, or municipal government has title to or a possessory right (i.e. leasehold interest) in private use property.

(2) The taxability provision will not apply if a private user was entitled to use the property pursuant to a lease or other agreement entered into before the effective date of Act 92-599 (May 21, 1992) or would be entitled to use the property at some future time pursuant to inducement (as defined in Act 92-599) entered into before the effective date of Act 92-599, and shall apply only to the property and the amount of capital expenditures set out in such inducement, subject to de minimis deviations. The inducement must be reflected in an official document.

(A) The term "**de minimis deviations**" as used in Code of Alabama 1975, Section 40-9B-1, et seq. and in this regulation shall mean, with reference to the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement.

(3) Private use property is any real and/or personal property which is or will be treated as owned by a private user for federal income tax purposes even though title may be held by a public authority or municipal or county governments.

(4) A private user is any individual, partnership, or corporation organized for profit that is or will be treated as the owner of private use property for federal income tax purposes.

(5) A lessee of property from a public authority, county, or municipal government shall be treated as the owner of such real and/or personal property for federal income tax purposes in accordance with Internal Revenue Service Rules and Regulations and Generally Accepted Accounting Principles.

(6) The treatment of a private user as owner for federal income tax only applies to property owned by a county, city or public authority.

(7) Once property becomes private use property, then said property shall not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease.

(8) When any lease or agreement entered into prior to the effective date of Act 92-599 (May 21, 1992) expires, the property covered by the lease or agreement will become taxable upon execution of a new lease. If the old lease contains a separately stated option to renew for a clearly defined and limited period of time, and the option is properly exercised, the property shall remain exempt for the renewal period as long as the renewal period conforms precisely to terms of the option

a. Changes, alterations, or rewrites of a lease for refinancing purposes if consistent with the original terms of the lease, and which do not extend the term of the initial or permitted renewal term, will not alter the exempt status of the property.

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(1) Real and/or personal property acquired in connection with establishing or expanding an industrial or research enterprise in Alabama.

(2) The industrial or research enterprise must be described in the 1987 standard industrial classification major groups 20 to 39, inclusive, 50 and 51, industrial group number 737 and industry numbers 8731, 8733, and 8734, as set forth in the Standard Industrial Classification Manual published by the United States Government Office of Management and Budget.

(3) If the trade or business to be conducted by a private user at a given site is predominantly (i.e. more than 50% of the project investment) in the nature of an industrial or research enterprise then all of the property to be acquired or constructed at said site will constitute industrial development property eligible for abatements under the Act. If the predominant activity is not in the nature of an industrial or research enterprise, then only that portion, if any, of the property which will be so used will constitute industrial development property eligible for abatements under the Act.

(4) No further abatement with respect to the same private use industrial property may be granted unless there is a major addition to the property, in which event, abatement may be granted only with respect to the noneducational ad valorem taxes on the major addition.

A. To constitute a major addition, the lesser of an investment of 30 percent of the original cost of currently existing industrial property, the sum total of original facilities and equipment and any expansion or additions to date prior to abatement request, or \$2,000,000 must be made.

B. Such major addition shall not include capitalized repairs, rebuilds, or maintenance, nor shall replacement equipment qualify.

1. Replacement property shall qualify for the remainder of an abatement previously granted on the equipment being replaced.

2. Replacement equipment acquired subject to a lease in effect prior to Act 92-599 becoming law shall be taxable only according to the provisions of the lease.

3. Equipment that performs the same function as the equipment it replaces even though the new equipment performs the function better or faster shall be defined as replacement.

Equipment that replaces existing equipment that performs not only the same function, but also an additional function, would qualify as capital investment toward the thirty (30) percent or \$2,000,000 threshold of a major addition.

4. Any expansion of an existing facility must be a major addition.

C. Cost associated with renovating or remodeling existing facilities of an operating industrial or research enterprise shall not qualify for an abatement.

(5) Only industrial property not previously placed in service in Alabama by the user or a related party may be eligible for an abatement of noneducation ad valorem taxes.

(6) "Change of ownership or assignment of interest of an operating industrial or research enterprise shall not qualify the property for a new or additional abatement on property previously abated. The new owner shall be allowed to receive the remainder of abatements previously granted on the above industrial or research enterprise."

(7) "Change of ownership or assignment of interest of the property of a nonoperating industrial or research enterprise to an unrelated party shall qualify the property for a new abatement if the new owner or private user otherwise qualifies for an abatement as though a new industrial or research enterprise was established in the state."

a. "A nonoperating industrial or research facility will be considered one that has ceased operation for a period of six consecutive calendar months."

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(1) Noneducation ad valorem taxes may be abated with respect to private use industrial property.

A. Education taxes, defined as ad valorem taxes that must, pursuant to the Constitution of Alabama of 1901, as amended, legislative act, or the resolution or other action of the governing board authorizing the tax, be used for educational purposes or for capital improvements for education, cannot be abated.

B. Education taxes shall also be defined as those taxes dedicated solely for education purposes or a specified percentage thereof.

(2) No abatement of noneducational ad valorem taxes may exceed the maximum exemption period.

A. Maximum exemption period shall be equal to the shorter of:

(1) Ten years from and after:

(a) The date of initial issuance by a county, city, or public authority of bonds to finance any costs of a private use property, or

(b) If no such bonds are ever issued, the later of: (i) the date on which title to such property was acquired by or vested in such county, city, or public authority, or (ii) the date on which such property is or becomes owned, for federal income tax purposes, by a private user; or

(3) The weighted average economic life of the assets comprising such property, determined consistently with the provisions of 26 U.S.C. ~147(b) and measured from the date such property is placed in service.

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#### 810-4-3-.05 Procedures for Granting of Abatement

(1) A petition for abatement of noneducation ad valorem taxes may be made by any person who is the owner of private use industrial development property or proposes to become a private user of industrial development property or of a major addition to existing industrial development property, to the governing body of any municipality, county, or public industrial authority, prior to the time the property is placed in service. The petition may be accompanied by an application provided by the state Department of Revenue and shall contain information that will permit the governing body to make a reasonable cost/benefit analysis as to the proposed industrial development property, to determine qualification of such property, and to determine the maximum abatement period.

(2) Subject to geographical or jurisdictional limitations, the governing body of a municipality, a county, or a public industrial authority may grant abatements of all of the taxes allowed to be abated with respect to private use industrial property.

(A) The governing body of a municipality is authorized to grant abatements with respect to private use industrial property located within the limits of the municipality or within the police jurisdiction of the municipality.

(B) The governing body of a county is authorized to grant abatements with respect to private use industrial property located in the county and not within a municipality or the police jurisdiction of a municipality unless consented to by resolution of the governing body of the municipality.

(C) The governing body of a public industrial authority is authorized to grant abatements with respect to private use industrial property located within the jurisdiction of the public industrial authority.

(3) The abatements granted by the governing body shall be embodied in an agreement between the governing body and the private user, setting forth:

A. The estimated amount of each abatement and the maximum exemption period.

B. Good faith projections by the private user of: the amount to be invested; the number of individuals to be employed, initially and in the succeeding three years; and the payroll.

(4) The private user shall file with the Department of Revenue within ninety (90) days after the granting of the abatements, a copy of the required agreement, petition, and application. History: Filed with LRS October 29, 1992, effective October



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Author: Ken Green  
Authority: 41-22-6 & 40-9B-5, Code of Alabama 1975  
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810-4-3-.06 Administrative Procedures

The Alabama Department of Revenue shall make available forms for applying for an abatement of noneducational ad valorem taxes. The forms shall include information that will be necessary for the governing body to which it is submitted to make a reasonable cost/benefit analysis as to the proposed industrial development property and to determine the maximum period of tax abatement.

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#### 810-4-3-.07 Enforcement

(1) The Department of Revenue shall enforce the provisions of Act 92-599 under the authority granted to the Department of Revenue in Title 40-2-11 of the 1975 Code of Alabama, as amended, which states that it shall be the duty of the Department of Revenue and it shall have the power and authority to have and exercise general and complete supervision and control of the valuation, equalization, and assessment of property and of the enforcement of the tax laws of the state, and of the several county tax assessors and county tax collectors, probate judges, and each and every state and county official, board, or commission charged with any duty in the enforcement of tax laws.

(2) The Department of Revenue through the Ad Valorem Tax Division shall review and conduct such inspections and investigations as necessary of abatements granted to verify property qualifying under Act 92-599.

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